

**REMARKS**

Reconsideration and allowance of the above-captioned patent application is respectfully requested in view of the above amendment and following remarks. Claim 2 is canceled without prejudice. Claims 1 and 3 have been amended. No new matter has been added. Upon entry of the amendment, claims 1 and 3-5 will be pending.

As a preliminary matter, the Office Action requests that Applicant file a certified copy of the British Application as required by 35 U.S.C. 119(b). Applicant has ordered a certified copy and will submit the copy in accordance with MPEP 1893.03 upon receipt from the United Kingdom Patent Office.

**I. The Claimed Invention Is Novel**

**A. The Kapperman Reference**

The Office Action rejected claim 1 under 35 U.S.C. § 102(e) as allegedly being anticipated by Kapperman *et al.* (6,004,032) (the “Kapperman reference”). Applicant traverses the rejection and requests reconsideration because the Kapperman reference does not teach or suggest a reclosable fastener wherein a *single flange for attachment of the closure* to a web or film is provided on only one of the two base members and in which the base members include means to attach the fastener additionally to the web or film.

The Office Action alleges that Kapperman “teaches a reclosable fastener . . . wherein a single flange extends upwardly . . . and is inherently capable of being used for attachment of the closure to a web or film.” (Office Action mailed Feb. 11, 2003, at p. 2-3). Applicant submits that the Kapperman reference does not teach or suggest the use of the minor projection (characterized as a “flange” by the Office Action) to attach the female profile 154

to the package wall 158. Nowhere does the Kapperman reference disclose or suggest using the minor projection to attach the closure to a web or film. In fact, the minor projection represented on Figure 11 is neither enumerated nor mentioned in the specification.

Further, the Office Action states that the minor projection in the Kapperman reference is “inherently capable of” being used for attachment of the closure to a web or film. The Office Action’s allegation that the minor projection is “capable of” attachment is insufficient to establish inherency. Inherency may not be established by probability or possibilities. *In re Robertson*, 49 USPQ2d 1949, 1951 (Fed. Cir. 1999). In *Robertson*, the Board found applicant’s claim directed to a third fastener for closing a diaper for disposal purposes anticipated because the diaper fastening means of a prior art reference was “capable of” operating as a third fastener to close the diaper for disposal. The Federal Circuit reversed the Board’s finding of invalidity stating the Board’s analysis rested upon the very kind of probability or possibility that the court has pointed out is insufficient to establish inherency. *Id.* Similarly, the Office Action’s allegation that the minor projection is “capable of” attachment is insufficient to establish inherency.

Thus, the Kapperman reference does not teach *a single flange for attachment of the closure to a web or film* as recited in Applicant’s claims. Accordingly, Applicant respectfully requests that this rejection under 35 U.S.C. § 102(e) be withdrawn.

#### B. The Boeckmann Reference

Claim 1 also stands rejected under 35 U.S.C. 102(b) as allegedly being anticipated by Boeckmann *et al.* (4,733,778) (the “Boeckmann reference”). Applicant traverses the rejection and requests reconsideration because the Boeckmann reference does not teach or

suggest a reclosable fastener comprising *a single flange for attachment of the closure to a web or film.*

The Office Action alleges that Boeckmann “teaches a recloseable fastener . . . wherein a single flange extends from the base member 12 of the female member . . . [and] while the device is not used by securing the flange to a web or film . . . the device of Boeckmann *et al.* is inherently capable of being secured to a web or film material.” (Office Action, mailed Feb. 11, 2003, at p. 3). Applicant submits that Boeckmann does not teach or suggest using the minor projection from the base 12 for attachment, in fact Boeckmann’s invention relates to carrier tapes for transporting electronic components where “holes 18 [are incorporated into the minor projection] . . . [and] designed to be engaged by an appropriate sprocket drive on the assembly equipment *which serves to propel* the tape.” (See Boeckmann, col. 3, lines 3-6) (emphasis added). Additionally, as discussed above, inherency may not be established by probability or possibilities.

Thus, the Boeckmann reference does not teach *a single flange for attachment of the closure to a web or film* as recited in Applicant’s claims. Accordingly, Applicant respectfully requests that this rejection under 35 U.S.C. § 102(b) be withdrawn.

### C. The Parniske Reference

The Office Action rejected claim 1 under 35 U.S.C. § 102(e) as allegedly being anticipated by Parniske *et al.* (6,026,761) (the “Parniske reference”). Applicant traverses the rejection and requests reconsideration because the Parniske reference does not teach or suggest a reclosable fastener in which the base members include means to attach the fastener additionally *to a web or film.*

The Office Action alleges that Parniske “teaches [a] recloseable fastener comprising a . . . closure between a pair of opposing base members, wherein a single flange for attachment of the closure to a web or film 15 is provided on only one of two base members.” (Office Action, mailed Feb. 11, 2003, at p. 3-4). Parniske does not teach or suggest a reclosable fastener comprising a male/female closure between a pair of opposed base members, in which the base members include means to attach the fastener additionally to *a web or film*. Rather, Parniske discloses attaching a locking strip 20 onto a channel 18 with a bottom surface 25 such as a windshield or arch. (Parniske, col. 3, lines 51-65 and col. 6, lines 4-6).

Thus, the Parniske reference does not teach a single flange for attachment of the closure to *a web or film* as recited in Applicant’s claims. Accordingly, Applicant respectfully requests that this rejection under 35 U.S.C. § 102(e) be withdrawn.

## II. The Claimed Invention Is Not Obvious

### A. The Kapperman Reference In View Of the Bentsen Reference

Claims 2-4 stand rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over the Kapperman reference in view of Bentsen (4,673,383) (the “Bentsen reference”). Applicant respectfully traverses the rejection because the cited references do not teach or suggest a reclosable fastener having *a single flange for attachment of the closure* to a web or film provided on only one of the two base members.

As discussed above, the Kapperman reference does not teach or suggest a reclosable fastener having *a single flange for attachment of the closure* to a web or film provided on only one of the two base members. The Bentsen reference does not cure the deficiencies of the Kapperman reference.

The Bentsen reference discloses a fastener strip that is applied in a longitudinal manner to a web. The Bentsen reference does not disclose or suggest the use of a single flange to attach the closure to a web or film. Rather, the closure in Bentsen is attached to the bag making material 20 at the fusion ribs 17. The remainder of the base surface 12 remains a free area 25 that permits the bag wall material to spread away from the free areas 25. (Bentsen, col. 3, lines 54-60). Thus, the Bentsen reference does not disclose or suggest using a single flange to attach the closure to a web or film.

Accordingly, the rejection of claims 2-4 under 35 U.S.C. § 103(a) as allegedly being obvious over the Kapperman reference in view the Bentsen reference is improper because the cited references do not teach or suggest a reclosable fastener having *a single flange for attachment of the closure* to a web or film provided on only one of the two base members, as recited in the claims. Withdrawal of the rejection of claims 2-4 under 35 U.S.C. § 103(a) is respectfully requested.

**B. The Kapperman Reference In View Of The Bentsen Reference And Further In View Of The Custer Reference**

Claim 5 stands rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over the Kapperman reference in view of the Bentsen reference as applied to claim 3, and further in view of Custer *et al.* (5,216,787) (the “Custer reference”). Applicant respectfully traverses the rejection because the cited references do not teach or suggest a reclosable fastener having *a single flange for attachment of the closure* to a web or film provided on only one of the two base members.

As discussed above, the Kapperman and Bentsen references do not teach or suggest a reclosable fastener having a *single flange for attachment of the closure* to a web or film provided on only one of the two base members. The Custer reference does not cure the deficiencies of the Kapperman and Bentsen references.

The Custer reference, as shown in figure 2, discloses a fastener strip that has one lateral web 14 on *both* closure elements 19A and 19B. The Custer reference does not disclose or suggest using *a single flange to attach the closure* to a web or film.

Accordingly, the rejection of claim 5 under 35 U.S.C. § 103(a) as allegedly being obvious over the Kapperman reference in view the Bentsen reference and further in view of the Custer reference is improper because the cited references do not teach or suggest a reclosable fastener having *a single flange for attachment of the closure* to a web or film provided on only one of the two base members, as recited in the claims. Withdrawal of the rejection of claim 5 under 35 U.S.C. § 103(a) is respectfully requested.

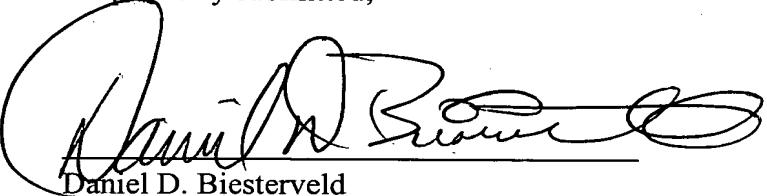
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**PATENT**

### **III. Conclusion**

In view of the foregoing amendments and remarks, Applicant respectfully submits that the present application is in condition for allowance. Reconsideration of the application and an early Notice of Allowance are respectfully requested. In the event that the Examiner cannot allow the present application for any reason, the Examiner is encouraged to contact Applicant's attorney Daniel Biesterveld at (215) 557-5963.

Respectfully submitted,



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